

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

PAUL CASTONGUAY,)	4:10CV3036
)	
Plaintiff,)	
)	
v.)	
)	MEMORANDUM
LINCOLN CORRECTIONAL)	AND ORDER
CENTER DIAGNOSTIC &)	
EVALUATION CENTER,)	
)	
Defendant.)	

Plaintiff filed his Complaint in this matter on February 23, 2010. (Filing No. 1.) On March 4, 2010, the court granted Plaintiff leave to proceed in forma pauperis. (Filing No. 6.) Thus, the court now conducts an initial review of the Complaint to determine whether summary dismissal is appropriate pursuant to 28 U.S.C. § 1915A.

I. SUMMARY OF COMPLAINT

Plaintiff filed his Complaint against one Defendant, the Lincoln Correctional Center (“LCC”), which is a State of Nebraska correctional facility. (Filing No. 1 at CM/ECF p. 1.) Plaintiff is currently incarcerated at the Tecumseh State Correctional Institution. (*See* Docket Sheet.)

Condensed and summarized, Plaintiff alleges that in January, 2010, he sent grievances to officials at the LCC regarding his telephone privileges. (Filing No. 1 at CM/ECF p. 5.) When officials replied to the grievances, they used “sexual slander words” and were otherwise “unprofessional” in their responses to Plaintiff. (*Id.*) Plaintiff alleges that this conduct violates his constitutional rights. Plaintiff requests that the court award him a “Quarter Million Dollars for being intimidated” and

embarrassed by this conduct.¹ (*Id.*)

II. APPLICABLE LEGAL STANDARDS ON INITIAL REVIEW

The court is required to review prisoner and in forma pauperis complaints seeking relief against a governmental entity or an officer or employee of a governmental entity to determine whether summary dismissal is appropriate. *See* [28 U.S.C. §§ 1915\(e\)](#) and [1915A](#). The court must dismiss a complaint or any portion thereof that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#); [28 U.S.C. § 1915A](#).

A pro se plaintiff must set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible,” or “their complaint must be dismissed” for failing to state a claim upon which relief can be granted. [Bell Atlantic Corp. v. Twombly](#), 550 U.S. 544, 569-70 (2007); *see also* [Ashcroft v. Iqbal](#), 129 S. Ct. 1937, 1950 (2009) (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”). Regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff’s complaint must allege specific facts sufficient to state a claim. *See* [Martin v. Sargent](#), 780 F.2d 1334, 1337 (8th Cir. 1985). However, a pro se plaintiff’s allegations must be construed liberally. [Burke v. North Dakota Dep’t of Corr. & Rehab.](#), 294 F.3d 1043, 1043-44 (8th Cir. 2002) (citations omitted).

¹Plaintiff also requests that the court “prevent [the conduct] to continue.” (Filing No. [1](#) at CM/ECF p. 6.) To the extent this is a claim for injunctive relief, the claim is moot because Plaintiff is no longer incarcerated at the LCC. [Martin v. Sargent](#), 780 F.2d 1334, 1337 (8th Cir. 1985) (“[A] prisoner’s claim for injunctive relief to improve prison conditions is moot if he or she is no longer subject to those conditions.”).

Liberalistically construed, Plaintiff here alleges federal constitutional claims. To state a claim under [42 U.S.C. § 1983](#), a plaintiff must allege a violation of rights protected by the United States Constitution or created by federal statute and also must show that the alleged deprivation was caused by conduct of a person acting under color of state law. [West v. Atkins](#), 487 U.S. 42, 48 (1988); [Buckley v. Barlow](#), 997 F.2d 494, 495 (8th Cir. 1993).

III. DISCUSSION OF CLAIMS

The Eleventh Amendment bars claims for damages by private parties against a state, state instrumentalities and an employee of a state sued in the employee's official capacity. *See, e.g., Egerdahl v. Hibbing Cmty. Coll.*, 72 F.3d 615, 619 (8th Cir. 1995); [Dover Elevator Co. v. Arkansas State Univ.](#), 64 F.3d 442, 446-47 (8th Cir. 1995). Any award of retroactive monetary relief payable by the state, including for back pay or damages, is proscribed by the Eleventh Amendment absent a waiver of immunity by the state or an override of immunity by Congress. *See, e.g., Dover Elevator Co.*, 64 F.3d at 444; [Nevels v. Hanlon](#), 656 F.2d 372, 377-78 (8th Cir. 1981). Sovereign immunity does not bar damages claims against state officials acting in their personal capacities, nor does it bar claims brought pursuant to [42 U.S.C. §1983](#) which seek equitable relief from state employee defendants acting in their official capacity.

Here, Plaintiff seeks only monetary relief against the LCC, which is a State of Nebraska facility. (Filing No. [1](#).) As set forth above, Plaintiff may not sue a state for monetary relief absent a waiver of immunity by the state or an override of immunity by Congress. There is nothing in the record before the court showing that the State of Nebraska waived, or that Congress overrode, sovereign immunity in this matter. As such, Plaintiff's Complaint must be dismissed.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Complaint (filing no. [1](#)) is dismissed without prejudice.
2. A separate Judgment will be entered in accordance with this Memorandum and Order.

DATED this 1st day of April, 2010.

BY THE COURT:

Richard G. Kopf
United States District Judge

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